

1 DANIEL G. BOGDEN
2 United States Attorney

3 GREG ADDINGTON
4 Nevada Bar # 6875
5 Assistant United States Attorney
6 100 West Liberty Street, Suite 600
7 Reno, NV 89501
8 (775) 784-5438
9 (775) 784-5181-facsimile

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 U.S. EQUAL EMPLOYMENT
13 OPPORTUNITY COMMISSION,

14 Plaintiff,

15 v.

16 WELLS FARGO BANK, N.A.,

17 Defendant.

Case No. 3:13-cv-00528-RCJ-WGC

**MOTION FOR RECONSIDERATION
REGARDING ORDER (#7) DENYING
ADMISSION OF EEOC ATTORNEYS**

18 **MOTION FOR RECONSIDERATION**

19 The United States Attorney for the District of Nevada, together with the plaintiff, U.S. Equal
20 Employment Opportunity Commission ("EEOC"), respectfully seek reconsideration of the Court's
21 October 2, 2013 Order ("Order") (ECF No. 7), in which the Court denied motions by the U.S.
22 Attorney for the District of Nevada to allow EEOC Regional Attorney, William Tamayo; EEOC
23 Supervisory Trial Attorney, Jonathan Peck; EEOC Supervisory Trial Attorney, Marcia Mitchell; and
24 EEOC Trial Attorney, Sirithon Thanasombat (collectively, "EEOC attorneys") to appear on behalf of
25 Plaintiff, EEOC, in this case. (ECF Nos. 2, 3, 4, and 5). The Court stated that "[b]efore the Court will
26 permit the EEOC attorneys to practice before this Court, the Court requires a showing that the Nevada
27 admitted Assistant United States Attorneys in our judicial district are incapable of handling this matter
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1 and, more importantly, make a showing that petitioners are willing to abide by the ethical standards of
2 this Court and the State Bar of Nevada by not filing frivolous and time-wasting motions.” Order at 2.

3 The United States Attorney and the EEOC respectfully submit that reconsideration is
4 appropriate here because the Order is inconsistent with federal law. The EEOC is an independent
5 agency of the United States. Congress granted the EEOC the statutory authority to institute civil
6 actions under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”). 42 U.S.C. § 2000
7 et. seq. Under Section 705 of Title VII, the Chair of the EEOC is responsible for the administrative
8 operations of the agency, and the General Counsel is responsible for conducting litigation to enforce
9 the statute. 42 U.S.C. §§ 2000e-4(a), 2000e-4(b)(1), 2000e-4(b)(2). Attorneys appointed pursuant to
10 Section 705 are authorized to appear for and represent the Commission in any case in court. 42 U.S.C.
11 §§ 2000e-4(b)(1) - (2). The EEOC San Francisco District Office is responsible for enforcement of
12 Title VII in the State of Nevada counties of Carson City, Churchill, Douglas, Elko, Eureka, Humboldt,
13 Lander, Lyon, Pershing, Storey, Washoe and White Pine.

14 The Court’s recent Order was made in clear error because Title VII clearly authorizes EEOC
15 attorneys to practice before this Court at the direction of the Commission, and limits the role of the
16 U.S. Attorney General to litigating cases where the respondent is a government entity or political
17 subdivision, or where the EEOC is a party in the Supreme Court. 42 U.S.C. §§ 2000e-4(b)(2), 2000e-
18 5(f)(1). Title VII does not empower the U.S. Attorney’s Office with authority to litigate cases against
19 private employers, thus, rendering Assistant U.S. Attorneys for the District of Nevada “incapable of
20 handling” the present case. The U.S. Attorney and the EEOC therefore respectfully request that the
21 Court reconsider its Order and allow the EEOC attorneys to appear before this Court as counsel for the
22 Plaintiff and fulfill their duties under Title VII.

23 **FACTUAL AND PROCEDURAL BACKGROUND**

24 On September 25, 2013, the EEOC initiated this employment discrimination action under Title
25 VII and Title I of the Civil Rights Act of 1991 against Defendant Wells Fargo Bank, N.A. to correct
26 unlawful employment practices on the basis of sex and constructive discharge. On September 27, 2013,
27 the U.S. Attorney for the District of Nevada filed four motions to permit the appearance of Ms. Marcia
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1 Mitchell (ECF No. 2), Mr. Jonathan Peck (ECF. No. 3), Mr. William Tamayo (ECF. No. 4), and Ms.
2 Sirithon Thanasombat (ECF. No. 5) in all matters related to this case. In those motions, the U.S.
3 Attorney confirmed that Ms. Mitchell, Mr. Peck, Mr. Tamayo, and Ms. Thanasombat are attorneys
4 employed by the EEOC. The motion also explained that Ms. Mitchell is a member in good standing of
5 the State Bar of Washington, that Mr. Peck is a member in good standing of the State Bar of Virginia,
6 and that Mr. Tamayo and Ms. Thanasombat are members in good standing of the State Bar of
7 California.

8 On October 2, 2013, the Court issued an Order denying the four motions to appear. (ECF No.
9 7.) In that Order, the Court explained that Nevada Local Rule IA 10-3 provides for the appearance of
10 any nonresident attorney employed by the United States “unless otherwise ordered by the Court.”
11 Order at 2. The Court then denied the four motions to appear. It stated that, prior to permitting the
12 EEOC attorneys to appear, it required “a showing that the Nevada admitted Assistant United States
13 Attorneys in [the District of Nevada] are incapable of handling this matter and, more importantly . . . a
14 showing that petitioners are willing to abide by the ethical standards of this Court and the State Bar of
15 Nevada by not filing frivolous and time-wasting motions.” *Id.* at 2. The Court provided no rationale
16 for denying the motions. The Court, moreover, had no prior experience with the EEOC attorneys,
17 none of whom has appeared before the Honorable Judge Robert C. Jones in the past.

18 LEGAL BACKGROUND

19 Title VII grants exclusive authority to the EEOC, not the U.S. Attorney, to litigate employment
20 discrimination suits against nongovernmental defendants. 42 U.S.C. § 2000 et seq. Enacted on July 2,
21 1964, Title VII prohibits employment discrimination based on race, color, religion, sex, and national
22 origin. This federal law also created the EEOC, the agency empowered to “prevent any persons from
23 engaging in any unlawful employment practice as set forth in [sections] of this title.” 42 U.S.C. §§
24 2000e-4, 2000e-5. The Equal Employment Opportunity Act of 1972 amended Title VII to provide the
25 EEOC the authority to sue nongovernment respondents—such as employers, unions, and employment
26 agencies—in federal court if, *inter alia*, the agency cannot secure an acceptable conciliation
27 agreement. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (1972);
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1 *Equal Employment Opportunity Commission v. Kimberly-Clark Corp.*, 511 F.2d 1352, 1355 (6th Cir.
 2 1975) (holding that through the 1972 amendment, Congress intended to give broad authority to the
 3 Commission to enforce Title VII).¹

4 ARGUMENT

5 District courts have inherent authority to reconsider, rescind, or modify an interlocutory order
 6 as long as the court retains jurisdiction over the case. *City of L.A. v. Santa Monica Baykeeper*, 254
 7 F.3d 882, 885 (9th Cir. 2001) (internal citation omitted); *United States v. Martin*, 226 F.3d 1042, 1049
 8 (9th Cir. 2000). A motion for reconsideration is appropriate when the district court is presented with
 9 newly discovered evidence, committed clear error, or if there is an intervening change in the
 10 controlling law. *School Dist. No. 1J Multnomah Cnty, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th
 11 Cir. 1993); *Villanueva v. United States*, 662 F.3d 124, 128 (1st Cir. 2011) (where movant shows
 12 district court has misunderstood the party or made error of apprehension reconsideration may be
 13 proper). In this case, the Order denying appearance should be reconsidered because it amounts to
 14 clear legal error.

15 As a threshold matter, the Order must be reconsidered because the Court declined to articulate
 16 its reasons for denying the motions to appear. A court denying an application to appear “must
 17 articulate [its] reasons, for the benefit of the defendant and the reviewing court. [M]echanistic
 18 application of rules limiting such appearances is improper.” *United States v. Ries*, 100 F.3d 1469,
 19 1472 (9th Cir. 1996) (quotation marks and internal citations omitted). The Court in this case provided
 20 no such articulation. Instead the Court states that before permitting the EEOC attorneys to practice
 21 before it, the Court required a showing that the EEOC attorneys are “willing to abide by the ethical
 22 standards of this Court and the State Bar of Nevada by not filing frivolous and time-wasting motions.”
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24 ¹ The litigation authority and jurisdiction of the EEOC was again expanded by the Reorganization Plan
 25 No. 1 of 1978. In a speech to Congress, former President Jimmy Carter stated that the Reorganization
 26 Plan No. 1 of 1978 made the EEOC the “principal Federal agency in fair employment enforcement”
 27 and “gives the [EEOC] . . . the primary Federal responsibility in the area of job discrimination.”
 28 Message of the President (February 23, 1978).

1 Order at 2. This requirement is neither included in the Local Rules nor the Federal Rules of Civil
2 Procedure as a precondition to appearing before this court. Moreover, the Court made no findings
3 concerning the professional conduct of any of the EEOC attorneys or concerning any other bases for
4 eligibility under the Local Rules. The discretion to grant or deny a motion to appear provided to the
5 Court by Nevada Local Rule IA 10-3 does not absolve the Court from articulating the basis for its
6 decision. Therefore, the absence of any explanation for the Court's decision in this case was clear
7 error, and reconsideration of the Order is appropriate.

8 The Order also was made in clear legal error because it directly conflicts with Title VII. 42
9 U.S.C. § 2000 et seq. Title VII expressly authorizes the EEOC to bring a civil action in three
10 situations: the Commission can file a suit against a nongovernmental respondent if it is unable to
11 secure a conciliation agreement with the respondent, or if the Commission has reasonable cause to
12 believe a nongovernmental employer is engaged in a pattern or practice of employment discrimination.
13 42 U.S.C. §§ 2000e-5(f)(1), 2000e-(6)(a)-(c); *see also*, *EEOC v. General Tel. Co.*, 599 F.2d 322 (9th
14 Cir.1979); *Equal Employment Opportunity Commission v. Sears, Roebuck & Co.*, 504 F.Supp. 241
15 (N.D.Ill. 1980). Title VII also expressly empowers the EEOC to bring an action for appropriate
16 temporary or preliminary relief if the Commission determines that prompt judicial action is necessary.
17 42 U.S.C. § 2000e-5(f)(2). The Court here mistakenly assumed that the U.S. Attorney for the District
18 of Nevada has jurisdiction and authority to "handl[e] this matter." Order at 2. However, Title VII
19 only names the EEOC General Counsel, appointed by the President, as the individual responsible for
20 conducting litigation pursued under this statute. 42 U.S.C. § 2000e-4(b)(1).

21 Title VII also expressly allows EEOC attorneys to "appear for and represent the Commission
22 in any case in court" 42 U.S.C. § 2000e-4(b)(2). Of particular relevance here, this statutory
23 authority is not constrained by the residency of the attorney in question. To the contrary, 42 U.S.C. §
24 2000e-4(b)(2) makes clear that EEOC attorneys appointed by the General Counsel to represent the
25 agency may appear for and represent the agency "in *any* case in court" 42 U.S.C. § 2000e-
26 4(b)(2). The statute grants the EEOC Chair authority over the administrative operations of the agency
27 and the General Counsel the discretion to conduct litigation under the statute. Consistent with this
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1 authority, attorneys from the EEOC San Francisco District office have been designated to litigate
2 cases arising in Washoe County, Nevada. By denying the motions for appearance, the Court
3 incorrectly infringed on the statutory authority of the EEOC Chair and General Counsel to determine
4 to whom litigation responsibilities will be assigned.

5 The Attorney General is not authorized to litigate Title VII actions filed against
6 nongovernmental defendants, such as Wells Fargo Bank, N.A. *See* 42 U.S.C. § 2000e-4(b)(1).
7 There are only limited circumstances where the Attorney General may pursue a Title VII action:
8 where the respondent named in the charge is a government, governmental agency, or political
9 subdivision, 42 U.S.C. § 2000e-5(f)(1), or where the EEOC is a party in the U.S. Supreme Court, 42
10 U.S.C. § 2000e-4(b)(2). The Assistant U.S. Attorneys, serving under the direction of the Attorney
11 General, therefore, lack the statutory authority to represent the EEOC in this action.

12 Finally, the EEOC petitioners are willing to abide by the ethical standards of this Court and the
13 State Bar of Nevada. As federal government lawyers, the EEOC attorneys are bound by the Federal
14 Rules of Civil Procedure, including Rule 11 which requires, *inter alia*, that an attorney certify to the
15 best of the person's knowledge that all pleadings or written motions presented to the court will not be
16 filed for an improper purpose, and that legal contentions are warranted by existing law or by a non-
17 frivolous argument. FED. R. CIV. PRO. 11(b). There is no evidence that EEOC attorneys will not
18 proceed professionally and ethically.

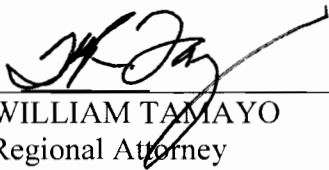
19 CONCLUSION

20 Title VII empowers only the EEOC to initiate civil actions and to conduct litigation pursued
21 under this statute when a charge is made against nongovernmental respondents. Wells Fargo Bank,
22 N.A. is the nongovernmental defendant in the case, and thus, the Attorney General and the U.S.
23 Attorney's Office lack the jurisdiction and statutory authority to litigate the present matter before this
24 Court. Nothing in the Order provides a basis for overriding the statutory authority provided to the
25 EEOC by Title VII. Accordingly, and for all of the foregoing reasons, the United States Attorney and
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1 the EEOC request that the Court reconsider its Order, and that it allow the EEOC attorneys to appear
2 as counsel before this Court in the present action.

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4 DANIEL G. BOGDEN
5 United States Attorney
6 District of Nevada

7 /s/ Greg Addington
8 GREG ADDINGTON
9 Assistant United States Attorney
10 Nevada Bar. No. 6875
11 100 West Liberty Street, Suite 600
12 Reno, Nevada 89501
13 Phone: (775)334-3347
14 Facsimile: (775)784-5381
15 Email: Greg.Addington@usdoj.gov

16 
17 WILLIAM TAMAYO
18 Regional Attorney
19 U.S. EEOC
20 450 Golden Gate Avenue
21 5 West P.O. Box 36025
22 San Francisco, CA 94102
23 Phone: (415) 522-3366
24 Facsimile: (415) 522-3425
25 Email: William.Tamayo@eeoc.gov
26
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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing **MOTION FOR RECONSIDERATION REGARDING ORDER (#7) DENYING ADMISSION OF EEOC ATTORNEYS** was made through the Court's electronic filing and notice system (CM/ECF) on November 25, 2013.

/s/ Greg Addington
GREG ADDINGTON